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FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AUG 21 2019
AUG 21 2019
Judge Thomas M. Durkin
United States District Court

UNITED STATES OF AMERICA

No. 17 CR 611-5

v.

Judge Thomas M. Durkin

MARCHELLO DEVINE

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant MARCHELLO DEVINE, and his attorney, LAWRENCE WOLF LEVIN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The superseding indictment in this case charges defendant with racketeering conspiracy in violation of Title 18, United States Code, Section 1962(d).

3. Defendant has read the charges against him contained in the superseding indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the superseding indictment: Count One, which charges

defendant with racketeering conspiracy in violation of Title 18, United States Code, Section 1962(d).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

Beginning no later than in or about the mid-1990s, and continuing until in or about 2017 in the Northern District of Illinois, Eastern Division, MARCHELLO DEVINE knowingly conspired to conduct and participate in the conduct of the affairs of the Four Corner Hustlers street gang through a pattern of racketeering activity described in Count One of the superseding indictment, in violation of Title 18, United States Code, Section 1962(d).

The Four Corner Hustlers street gang constituted an ongoing organization whose leadership, membership, and associates functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise. The Four Corner Hustlers was a group of individuals associated in fact and therefore an “enterprise,” as defined in Title 18, United States Code, Section 1961(d), that engaged in, and its activities affected, interstate commerce. As part of his membership in the Four Corner Hustlers, DEVINE agreed and knew that a co-conspirator would commit at

least two acts of racketeering activity in the conduct of the affairs of the Four Corner Hustlers street gang.

The purposes of the Four Corner Hustlers included, but were not limited to, the following: (a) enriching the leaders, members, and associates of the enterprise through the use of threats, intimidation, and violence, including, but not limited to, acts of murder, robbery, extortion, and the illegal trafficking of controlled substances; (b) promoting and enhancing the enterprise and its members' and associates' activities; (c) preserving and protecting the power, territory, operations, and proceeds of the enterprise through the use of threats, intimidation, and violence, including, but not limited to, acts of murder, attempted murder, aggravated battery with a firearm, and other acts of violence; (d) keeping victims and witnesses in fear of the enterprise and in fear of its leaders, members, and associates through acts and threats of violence; and (e) taking steps designed to prevent law enforcement's detection of the enterprise's criminal activities.

Defendant DEVINE acknowledges that Four Corner Hustlers were an enterprise engaged in and affecting interstate commerce, including but not limited to the purchase, acquisition, transfer, use, maintenance, concealment, and disposal of firearms, including across state lines, and the purchase, sale, and distribution of illegal narcotics that had moved in or affected interstate commerce.

DEVINE knowingly and intentionally conspired with the leadership, members, and associates of the Four Corner Hustlers to engage in a pattern of

racketeering activity for and on behalf of the Four Corner Hustlers. In particular, DEVINE knew that the Four Corner Hustlers were involved in drug trafficking and sold heroin and other controlled substances at various locations, including the west side of Chicago, where they would conduct hand-to-hand drug transactions with customers on the street. DEVINE and members of the enterprise used social media to promote their drug trafficking activities. DEVINE also knew that the gang used firearms to protect themselves and the areas where they sold drugs. DEVINE also knew that gang members protected their drug territory from rival gang members and, if necessary, used violence to do so. DEVINE also knew that the Four Corner Hustlers extorted persons by demanding that drug dealers on the West side of Chicago pay a “tax” to the enterprise in order to sell drugs in a certain area or pay money or drugs to them out of fear of retaliation from the members of the enterprise. DEVINE agreed to participate in these activities, as further shown below.

Possession with intent to distribute heroin on May 20, 2005

On or about May 20, 2005, DEVINE and a juvenile (Individual 1) were standing on the 4600 block of West Harrison Street in Chicago. On several occasions, three different individuals engaged DEVINE in conversation about purchasing heroin. After each conversation, DEVINE motioned to Individual 1, and each time, Individual 1 handed a small bag of heroin to each person who spoke to DEVINE. Following the third interaction, Individual 1 retrieved heroin from a trunk of a car nearby. CPD officers arrested DEVINE and Individual 1. CPD officers recovered six

packets of heroin from Individual 1's pocket. DEVINE had approximately \$178 in United States currency in his pants pocket. Additionally, officers recovered approximately 36 additional packets of heroin from the trunk of the same car from which Individual 1 had just retrieved the items. DEVINE acknowledges that the heroin he possessed with the intent to distribute May 20, 2005, tested positive for approximately 11.8 grams of heroin.

Possession with intent to distribute heroin and cocaine on December 27, 2005

On or about December 27, 2005, two narcotics customers separately approached Individual 2 and engaged Individual 2 in short conversations on the 4500 block of West Jackson Boulevard in Chicago. Each time, the narcotics customers handed money to Individual 2, and Individual 2 went to the steps of a house at 4523 West Jackson Boulevard, retrieved heroin, and handed it to the narcotics customers. Individual 2 then yelled to DEVINE, who was across the street, words to the effect that Individual 2 was out of drugs to distribute and needed more. DEVINE walked across the street and handed Individual 2 a bag of narcotics, which Individual 2 placed under the rug of the steps of the same house at 4523 West Jackson Boulevard. Individual 2 handed DEVINE United States currency. Officers arrested DEVINE and Individual 2. Officers recovered the bag that DEVINE handed to Individual 2, which contained six packets of heroin and one rock of cocaine. DEVINE also had \$150 in United States currency on his person.

DEVINE acknowledges that the substances recovered in the bag and that he possessed with intent to distribute tested positive for approximately 2.2 grams of heroin and .4 grams of cocaine.

Possession with intent to distribute heroin on October 8, 2006

On or about October 8, 2006, DEVINE was standing on the 4400 block of West Congress Parkway in Chicago. DEVINE engaged numerous people in short conversations after which DEVINE accepted amounts of United States currency in exchange for heroin DEVINE retrieved from his pants pocket. DEVINE observed CPD officers approach him and he fled. As DEVINE fled, he reached into his front pants pocket and threw a golf-ball sized object into a yard in the 4400 block of West Van Buren. CPD officers arrested DEVINE. CPD officers recovered the object discarded by DEVINE, which contained 13 tin foil packets wrapped in tape containing suspect heroin. DEVINE also had \$258 in United States currency on his person.

DEVINE acknowledges that the heroin he possessed with the intent to distribute on October 8, 2006, tested positive for approximately 1.3 grams of heroin.

Distribution of heroin on March 28, 2009

On or about March 28, 2009, Individual 3 was standing on the 400 block of South Kilbourn in Chicago. Individual 3 yelled "blows," a reference to heroin for sale, and waived in the direction of an undercover CPD officer. The undercover officer drove his vehicle to Individual 3 and Individual 3 asked the undercover officer and if the officer wanted to purchase heroin. The officer responded he/she wanted six

individual uses of heroin. Individual 3 walked away and spoke to DEVINE, who was standing nearby. DEVINE then approached the vehicle and confirmed that the officer wanted, "Six blows, right?" The officer replied affirmatively. DEVINE walked to a nearby gangway, then came back to the vehicle. DEVINE handed the officer six clear zip-lock baggies each containing suspect heroin. The officer handed DEVINE \$60 in United States currency.

DEVINE acknowledges that the heroin he distributed on March 28, 2009, tested positive for approximately 1.2 grams of heroin.

Possession with intent to distribute cocaine, cocaine base, and heroin on April 14, 2009

On or about April 14, 2009, DEVINE was standing in a rear yard of abandoned building on the 4500 block of West Adams in Chicago yelling "blows," a reference to heroin for sale. DEVINE placed a clear plastic bag under the porch of the property. CPD officers arrested DEVINE, and recovered the clear plastic bag DEVINE placed under the porch, which contained the following: (1) four knotted plastic baggies containing tinfoil wraps containing suspect cocaine; (2) seven zip-lock baggies with green dollar sign logos containing suspect heroin; (3) nine clear zip-lock baggies with "Superman" logos containing suspect heroin; and (4) 13 clear zip-lock baggies with green dollar sign logos containing suspect crack cocaine.

DEVINE acknowledges that the heroin he possessed with the intent to distribute on April 14, 2009, tested positive for approximately 3.4 grams of heroin, 1.9 grams of heroin and 1.1 grams of cocaine.

Attempted murder of Victim TS on August 31, 2012

It is the government's position that DEVINE participated in the attempted murder of Victim TS on or about August 31, 2012.

More specifically, the government's position is that, on or about August 31, 2012, DEVINE and co-defendant Rontrell Turnipseed got into an argument with Victim GD and others near the 4300 block of West Wilcox. The argument related to the sale of narcotics on the 4300 block of West Wilcox. Co-defendant Turnipseed instructed Victim GD that he/she was not allowed to sell narcotics on that block. During the argument, Turnipseed produced a handgun and began firing at Victim GD. Victim GD returned fire. During the shootout, Victim TS sustained four gunshot wounds, specifically two "through-and-through" wounds: one on her right side and one near her lower chest. Victim TS was in the hospital for several hours, required counseling once a week for two years, and still suffers from back pain.

It is DEVINE's position that he did not participate in this attempted murder.

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Pursuant to Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following

statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2018 Guidelines Manual.

b. Offense Level Calculations.

i. As to Count One, each underlying offense comprising the racketeering activity is treated as a separate count of conviction, pursuant to Guideline § 2E1.1(a)(2) and note 1.

Attempt murder of Victim TS on August 31, 2012 (Group One)

ii. It is the government's position that, pursuant to Guideline §§ 2E1.1(a)(2) and 2A2.1(a)(2), the base offense level is 27 because the underlying racketeering activity involved assault with intent to commit murder and/or attempt murder. It is the government's position that the offense level is increased by two levels because the victim sustained serious bodily injury pursuant to Guidelines § 2A2.1(b)(1)(B). The defendant does not agree that this base offense level applies. Both parties reserve the right to present evidence in support of their position on the base offense level at sentencing. It is the defendant's position that, pursuant to Guideline § 2E1.1(a)(1), the base offense level is 19.

Acceptance of responsibility

iii. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for her criminal conduct within the meaning of Guideline

§ 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level will be appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with respect to whether defendant has accepted responsibility within the meaning of Guideline § 3E1.1(a).

iv. If the Court determines that defendant has fully accepted responsibility within the meaning of Guideline § 3E1.1(a), and that the offense level is 16 or higher prior to the application of any reduction for acceptance of responsibility pursuant to § 3E1.1(a), the government will move for an additional one-level reduction in the offense level pursuant to Guideline § 3E1.1(b) because defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal 12 and defendant's criminal history category is V.

i. On or about November 15, 2005, defendant was convicted of possession of an amount of a controlled substance in the Circuit Court of Cook County, Illinois, in case number 05CR14882, and sentenced to 24 months' probation.

On or about May 10, 2006, defendant violated this probation with his conviction in 06CR02892 and was resentenced to 24 months' probation. Pursuant to Guideline § 4A1.1(c), defendant receives one criminal history point for this conviction.

ii. On or about May 10, 2006, defendant was convicted of possession with intent to deliver a controlled substance in the Circuit Court of Cook County, Illinois, in case number 06CR02892, and sentenced to 24 months' probation. Pursuant to Guideline § 4A1.1(c), defendant receives one criminal history point for this conviction.

iii. On or about February 5, 2007, defendant was convicted of possession with intent to distribute an amount of narcotics in the Circuit Court of Cook County, Illinois, in case number 06CR27251, and sentenced to four years' imprisonment. Pursuant to Guideline § 4A1.1(a), defendant receives three criminal history points for this conviction.

iv. On or about September 22, 2009, defendant was convicted of manufacture/delivery of heroin, in the Circuit Court of Cook County, Illinois, in case number 09CR08411, and sentenced to six years' imprisonment. Pursuant to Guideline § 4A1.1(a), defendant receives three criminal history points for this conviction.

v. On or about September 22, 2009, defendant was convicted of possession with intent to distribute an amount of narcotics in the Circuit Court of Cook County, Illinois, in case number 09CR08412, and sentenced to six years'

imprisonment. Pursuant to Guideline § 4A1.1(a), defendant receives three criminal history points for this conviction.

vi. On or about July 31, 2012, defendant was convicted of gambling in the Circuit Court of Cook County, Illinois, in case number 121220173, and sentenced to two days' imprisonment. Pursuant to Guideline § 4A1.2(c), defendant receives zero criminal history points for this conviction.

vii. On or about July 18, 2016, defendant was convicted of possession of an amount of a controlled substance in the Circuit Court of Cook County, Illinois, in case number 14CR1899601, and sentenced to 33 days' imprisonment. Pursuant to Guideline § 4A1.1(c), defendant receives one criminal history point for this conviction.

d. Anticipated Advisory Sentencing Guidelines Range.

Therefore, it is the government's position that, based on the facts now known to the government, the defendant's anticipated offense level is 27, which, when combined with the anticipated criminal history category of V, results in an anticipated advisory sentencing guidelines range of 120-150 months' imprisonment, in addition to any supervised release and fine the Court may impose. If the defendant receives the three-point reduction for acceptance of responsibility under Guideline § 3E1.1, the defendant's anticipated offense level is 24, which, when combined with the anticipated criminal history category of V, results in an anticipated advisory sentencing guidelines range of 92-115 months' imprisonment, in addition to any

supervised release and fine the Court may impose. It is the defendant's position that the defendant's anticipated offense level is 16, which, when combined with the anticipated criminal history category of V, results in an anticipated advisory sentencing guidelines range of 41-51 months' imprisonment, in addition to any supervised release and fine the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the

Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

14. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 17CR611.

15. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

16. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove

prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the superseding indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

17. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

18. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

19. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

20. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

21. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

22. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

23. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

24. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant,

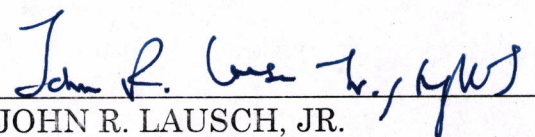
any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

25. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

26. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

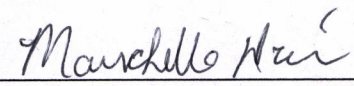
27. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 8/21/19

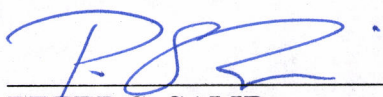


JOHN R. LAUSCH, JR.

United States Attorney



MARCHELLO DEVINE
Defendant

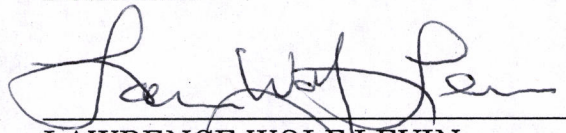


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